IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.442 of 2008
SHAHNAZ BEGUM, WIFE OF MD. DAUD ANSARI, VILLAGE KANHAULI, P.S. JHANJHARPUR, DISTRICT-MADHUBANI.

……...PETITIONER.

Versus

1. **THE STATE OF BIHAR.**
2. **SHRI INDAR PASWAN, EXECUTIVE MAGISTRATE, JHANJHARPUR, DISTRICT-MADHUBANI.**

…….OPPOSITE PARTIES.

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3. 14.11.2008. Heard Sri Ramakant Sharma, Senior Advocate, the learned counsel for the petitioner and Sri Jharkhandi Upadhayay, the learned A.P.P. for the State. Although notice was duly served on O.P. No.2, he has chosen not to appear and contest this application.

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Through this application, the petitioner has prayed for the quashing of the order daed 26.8.2007/27.8.2007 passed by the learned Additional Chief Judicial Magistrate, Jhanjharpur, in Jhanjharpur P.S. Case No.40 of 2007, whereby he has taken cognizance for offences under Section 188 I.P.C.

The informant, Indar Paswan, Executive Magistrate, Jhanjharpur, impleaded herein as O.P. No.2, gave a written report to the Officer Incharge that having held an inquiry into the application submitted by one Md. Sayeed Anwar of Ward No.1, regarding violation of the Model Code of Conduct he found that Shahnaz Begum, a candidate of Ward No.1 was canvassing for election on religious grounds and she was asking for votes on the basis of a calendar of the year 2007 which carried the photographs of Lord

Shankar therein. In course of inquiry, it transpired that beneath the photograph of Lord Shankar, election symbol of accused petitioner had been inscribed. The said calendar was produced on 23.5.2007 which is in violation of the Model Code of Conduct.

It has been submitted by the learned counsel for the petitioner that it would be apparent from perusal of the F.I.R. that merely on the basis of a complaint of a person who was political rival and jealous of the petitioner the present case had been instituted without the informant , O.P. No.2 having verified the same from the public in general and had recorded the evidence of some interested persons who unfortunately were goons of the complainant, Sayeed Anwar, and they did not take the trouble of recording the evidence of independent person. It was also submitted that the authority impliedly had not promulgated any order to that effect and hence the question of disobedience of the Model Code of Conduct does not arise more so when except the written complaint of Sayeed Anwar, the political rival of the petitioner, there was no other material available before the complainant.

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A person booked under Section 188 I.P.C. must have actual knowledge of public servant's order requiring him to do so from some act. Acquiring or gaining of such knowledge is a pre requisite. Mere proof of general notification promulgated by a public servant would not satisfy the requirement. It is true that the knowledge of accused could be presumed in certain circumstances but all the same a complaint/F.I.R. must indicate even though not in very expressed

terms, that he had the knowledge of the order and had knowingly disobeyed it. Where the terms of the complaint/F.I.R. did not provide even inkling in this regard, it cannot be said to make out or constitute an offence under Section 188 I.P.C. and in such a situation it would requiring quashing.

In the instant case, admittedly, the Model Code of Conduct are said to be in operation but the written report of O.P. No.2 to the Officer Incharge did not disclose as to whether the notification promulgated in that regard was to the knowledge of the accused.

Due regard being had to the facts and the circumstances of the case, the prosecution of the petitioner would be an abuse of the process of the court. Accordingly, the impugned order is hereby quashed and the application is allowed.

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(Abhijit Sinha,J)

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